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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1945

No. 827

EDITH VANDEVOIR, Petitioner,

vs.

SOUTHEASTERN GREYHOUND LINES,

Respondent.

REPLY BRIEF OF PETITIONER.

ERNEST M. WRIGHT,
FRANK R. MILLER,
ERNEST M. CAUSEY,
HOMER B. AIKMAN,

Counsel for Petitioner.

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a.

At page 2 of respondent's brief it is stated:

> "All advertising, ticket selling, loading and unloading of passengers and baggage and general contacts with the travelling public are handled through a separate terminal corporation at Evansville."

This deserves some exemplification. The name (R. 40) of the separate corporation is: Greyhound Terminal of Evansville, Inc.

It is an Indiana corporation. (R. 40).

An official of defendant was asked and gave answer (R. 18) as follows:

"Q. They are your agent there?

A. Yes, sure."

Without this testimony, the activities between respondent and Greyhound Terminal (R. 40-41) made the latter the agent of the former for the transaction of business in Indiana. Department of Treasury v. Ice Service, Inc., 220 Ind. 64 (1942).

The solicitation of business in Indiana was state wide. There were many other agents throughout the state. (R. 25, 40).

On application for its certificate of authority from Indiana respondent asserted itself to be a "public utility within the purview of the Motor Vehicle Act of 1935", the Indiana act. (R. 28) And on that application Indiana issued a certificate of authority to transact business here.

b.

At page 3 of its brief respondent undertakes to set out the second clause of the involved section of the Indiana statute. The first clause and the second clause, as shown in petitioner's brief at page 3, form a single sentence and are separated by a semicolon. This semicolon is followed immediately by the word "but". Respondent omits this word, and then proceeds with argument and asserts the conclusion that "the two clauses are each solely unrelated to the other" and therefore the language used in "one cannot be interpreted in the same sense in which it is used in the other". The significance of the word is discussed by petitioner at page 7 of her brief. It is thought the word earmarks the second clause of the statute

as an exception to the first and thereby supports the contention that the subject matter dealt with is the same in each clause, viz, nonresidence; consistent with the published heading of the statute and the rules of construction mentioned in petitioner's original brief.

c.

Argument is presented to show impracticability in petitioner's interpretation. That it would be impossible to determine what limitation statute would apply where a foreign corporation is sued. That is, if it be held the corporation has residence in more than one state, then on suit in Indiana confusion would arise. The answer is that the foreign corporation which comes to Indiana, as this respondent has, is not a non-resident and Section 2-606 has no application.

If a foreign corporation, not qualified and without process, voluntarily appears to a pending suit, it does so with its eyes open so far as the Indiana limitation statutes are concerned; and can exact only those benefits for which it can qualify.

It is said in 34 American Jurisprudence, Section 50 that:

> "If a substantial doubt exists as to which is the applicable statute of limitations, the longer rather than the shorter period of limitation is to be preferred."

The Eighth Circuit (Crawford County etc. Bank v. Crawford County, 66 Federal 2d 971, 973) remarks that where the question is doubtful as to the applicable limitation statute the "court will adopt the longer period."

And cites a previous decision of the same circuit (Payne v. Ostrus, 50 Fed. 2d 1039) and a decision of the 10th Circuit (Hughes v. Reed, 46 Fed. 2d 435). The Payne Case carries this language at page 1042:

"Of course if substantial doubt exists, the longer rather than the shorter, period of imitation is to be preferred."

The Hughes Case at page 440 says this:

"Where doubt exists as to the nature of the action, courts lean toward the application of the longer period of limitations."

And cites in support Iowa, Arkansas, Nebraska, Ohio and Oregon Cases.

If any contingency should arise by which a foreign corporation, not qualified in Indiana, should be subjected to jurisdiction and there is doubt as to what limitation statute applies, the above authorities point the way.

d.

We do not understand the Murphree Case (90 L. ed. 207) cited by respondent to support the nonmigration idea which in certain instances furnishes the reason for a declaration that residence cannot be acquired in another state. The court recognizes that corporations migrate. At page 209 it is said:

"By consenting to service of process upon its agent residing in the Southern District, petitioner rendered itself '*present*' there for the purpose of service." (Italics supplied).

Presence could not exist in Mississippi without migration. The word presence is used by Justice Cardozo (Comey, 217 N. Y. 268) in holding a foreign corporation is not a nonresident within the meaning of a limitation statute. In reaching his conclusion this is said:

"Its *presence* here is 'not temporary but continuous' and under the authority of our laws." (Italics supplied).

The Williams Case (90 L. ed. 247) expressly recognizes the reality of corporate migration. At page 249 is this:

> "A corporation chartered by one state commonly does business in the farthest reaches of the nation."

e.

Respondent asserts unimportance of the question presented. Petitioner recognizes the wide discretion in matters of this kind; but in view of the vast corporate activities beyond the chartering state and the conflicts as set out in the original brief, this petitioner believes the uncertainty created by the instant decision should be removed and the nonmigration idea put in its proper place.

Respectfully submitted,

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